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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,779	04/16/2004	Michael Sweeting	03-1083	1294
63710 7590 09/01/2009 DEAN P. ALDERUCCI CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER JOHNSON, GREGORY L.				
ART UNIT 3691		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/826,779

Applicant(s)

SWEETING ET AL.

Examiner

GREGORY JOHNSON

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,12-18,20-26,28-33,39 and 40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-10,12-18,20-26,28-33,39 and 40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/09/09 has been entered.

Status of Claims

2. Claims 1, 3-10, 12-18, 20-26 and 28-33 are amended. Claims 2, 11, 19, 27 and 34-38 are canceled. Claims 39-40 are new. **Claims 1, 3-10, 12-18, 20-26, 28-33 and 39-40 are pending.**

Response to Arguments

3. Applicant's arguments filed June 9, 2009 have been fully considered but they are not persuasive.

Applicant argues (pg. 11) "Claim 1 recites several features of an "order priority." "Order priority" is a term of art that is incompatible with Konia's "priority" in several respects."

In Response: The Examiner respectfully disagrees with Applicant's assertion regarding incompatibility.

The term "order" in trading systems is another way of indicating a bid or offer exists for a particular item that is being traded, such as financial instruments or any

goods/services. Konia teaches a method that automatically and dynamically prioritizes bids/orders relative to the value of related bids/orders (Abstract and ¶0011).

Applicant submitted an Affidavit on 3/9/2009 which solely contained Exhibit A – Barron's Dictionary of Finance and Investment Terms, which recites:

PRIORITY system used in an AUCTION MARKET, in which the first bid or offer price is executed before other bid and offer prices, even if subsequent orders are larger.

An examination of the Peterffy reference reveals a method used in an electronic trading system, in which orders are matched on a strict price and time priority algorithm (¶0011). The orders are received and placed in an electronic Central Order Book, which has been interpreted as being similar to a stack or a queue, in which a priority is maintained between the received orders (prior to the orders being executed) based on time, price, etc. The examination of Konia reveals a method for prioritizing bids/orders in an auction market (Abstract and ¶0011). Therefore, it was known in the art at the time of Applicant's invention that bids/orders could be automatically and dynamically prioritized based on price, relative to the price of related bids/orders, prior to execution.

The Examiner maintains that the combination of Peterffy and Konia disclose, teach, and suggest applicant's inventive concept.

Also, to support the rejection based on the combination of Peterffy and Konia, the Examiner employed the decision of The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S., 82 USPQ2d 1385, 1395-97 (2007) which identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the

reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.

To reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Then, Office personnel must articulate the following:

(1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; >>> **Examiner has established.**

(2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; >>> **Examiner has established.**

(3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and >>> **Examiner has established.**

The known work in the field of auctions (e.g. managing incoming bids/offers and maintaining priorities of said bids/offers) could have prompted variations of it for use in either the same field or a different one based on design incentives or other market forces, and the variations would have been predictable to one of ordinary skill in the art. See MPEP 2143 (Rev. 6, Sept. 2007), Rational (F).

Claim Objections

4. **Claims 4 and 20** were previously objected to in the Office Action filed 12/09/2009 for minor informalities. In view of Applicant's amendments, the objections have been withdrawn.
5. **Claims 1 and 18** are objected to because of the following informalities: In the third limitation the word "matched" is spelled as "matchied". Appropriate correction is required.

Claim Rejections - 35 USC § 101

6. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. **Claims 1, 3-10 and 12-17** are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 recites a process comprising the steps of receiving and executing. Based on Supreme Court precedent, a proper process must be (1) tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (*Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780,787-88 (1876)). Since neither of these requirements is met by the claim, the method is not considered a patent eligible process under 35 U.S.C. 101. To qualify as a statutory process, the claim should (1) positively recite (within the body of the claim) the other statutory class to which it is tied, for example by identifying the apparatus that accomplishes the

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significant steps of the process or (2) positively recite the physical subject matter that is being transformed from one state to another. Appropriate correction is required.

Claims 3-10 and 12-17 are rejected because of their dependency on claim 1.

Note: The first limitation, reciting an electronic trading system, has been interpreted as not performing any steps of the process claim. And as stated above, a process claim should (1) positively recite (within the body of the claim) the other statutory class to which it is tied, such as by positively reciting the apparatus performing the significant step(s).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. **Claims 1, 3-10, 12-13, 15-18, 20-26, 28-29 and 31-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterffy et. al., Pub. No. 2004/0254804 (hereinafter Peterffy) in view of Konia, Pat. No. 7,225,151 (hereinafter Konia).

As to claim 18, Peterffy discloses an electronic trading system for the exchange of financial instruments, said system comprising at least one processor (¶0071), the processor or processors of the system being configured to:

- receive and store orders to buy and to sell financial instruments as submitted by traders, and substantially as orders are received, to execute trades between matching buy and sell orders, the stored buy and sell orders having priority orderings relative to each other reflecting at least one attribute of the order in addition to or instead of price, the priority ordering used by the electronic trading system to determine priority among orders for matching for execution (Abstract and ¶0011; via electronic Central Order Book; and all orders are matched on a strict price and time priority algorithm);
- receive a dynamic price improvement order, being an order to buy or sell an identified a financial instrument traded on the electronic trading system, whose priority for execution against contraorders is maintained by the trading system at least in part relative to earlier-submitted orders on the same side of the market (Abstract and ¶0011; via electronic Central Order Book; and all orders are matched on a strict price and time priority algorithm);
- receive orders contra to the dynamic price improvement order, and match the contra order to the stored orders on the same side of the market as the dynamic price improvement order substantially as the contra orders

are received, the dynamic price improvement order being matched to the contra orders with the priority relative to other orders as maintained by the electronic trading system (Abstract and ¶0011; via electronic Central Order Book; and all orders are matched on a strict price and time priority algorithm), and

- execute transactions substantially as orders and contra orders are matched (Abstract, ¶0011 and ¶0026-0042); via electronic Central Order Book; and all orders are matched on a strict price and time priority algorithm).

Peterffy does not disclose the following:

- adjusting a price associated with the dynamic price improvement order.

As interpreted (in terms of the Peterffy reference), a price for a bid or offer within an electronic Central Order Book (i.e. a queue, a stack, etc.) will be automatically adjusted to maintain a priority position of said bid or offer within the order book.

Konia teaches a method for automatically managing an auction for determining relative priority for a service in a system wherein priority is based on the relative value of related bids is disclosed. The method comprises **checking for whether a first bid exceeds a second bid** in an auction **for determining continuing priority** for providing an ongoing service for at least a first and second bidder, wherein **the relative priority** for providing the service for the first bidder **is dependent on whether the value of the first bid exceeds the value of the second bid**, and wherein the relative priority for providing the service for the second bidder is dependent on whether the value of the

second bid exceeds the value of the first bid. The method further comprises **incrementing the first bid to a value exceeding the second bid** if the first bid does not exceed the second bid, **thereby causing the relative priority for providing service for the first bidder to exceed the priority for providing service for the second bidder**. The steps of checking and incrementing may be executed a plurality of times (i.e. bids are dynamically adjusted; see Abstract and col. 12, lines 2-5).

Peterffy discloses a price improvement processor to effectuate more rapid matching of bids and offers of financial instruments by conducting a rapid automated auction in which certain market participants may provide price improvement in increments that are finer than the prevailing standard minimum price variation and are provided a certain allocation as an incentive for such price improvements (Abstract). Peterffy also discloses that the orders (i.e. bids) orders from all types of market participants may interact directly with each other on a price/time priority basis (§0008). Peterffy also discloses that the orders are held in a Book (i.e. stack, queue etc).

Konia teaches a method for managing the priority of bids that have been submitted by buyers within in auction. Konia teaches that bidders can enter bids with maximum and minimum and that the online bid management system would keep track of the bids. Konia teaches that the system would increment (i.e. adjust) the lower bids until they reach their desired bidding position (e.g. position in a stack), while ensuring that the bids do not exceed their maximum values (col. 5, lines 50-67). Konia also discloses that the bidders and their bids can be replaced with buyers and their orders placed for products or services (col. 11, lines 19-45).

The inventive concept taught by Konia comprises: (1) a method for managing the priority position of bids/orders (e.g. dynamic price improvement order) that have been submitted with minimum and maximum amounts (i.e. price improvements), (2) a method for adjusting the bids/orders dynamically to maintain the position, while staying within the range set by the minimum and maximum amounts (i.e. dynamic price improvement indicators) and (3) maintaining said position until order ends.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify the price improvement method for electronic trading of financial instruments (which matched orders on a strict price and time priority algorithm) as disclosed by Peterffy, with the method for automatically adjusting bids/orders according to rules defined by its user (col. 1, lines 27-29) as taught by Konia, since the claimed invention is simply a substitution of one known element for another (i.e. algorithm that adjust pricing of bids dynamically), and one of ordinary skill in that art would have recognized that the results of the substitution were predictable. See MPEP 2143 (Rev. 6, Sept. 2007). Rational (B).

In addition, the known work in the field of auctions (e.g. managing incoming bids/offers and maintaining priorities of said bids/offers) could have prompted variations of it for use in either the same field or a different one based on design incentives or other market forces, and the variations would have been predictable to one of ordinary skill in the art. See MPEP 2143 (Rev. 6, Sept. 2007), Rational (F).

As to claim 1, Peterffy discloses a method for operating an electronic trading system for the exchange of financial instruments, the method comprising the steps of:

- in an electronic trading system **designed to receive and store orders** to buy and to sell financial instruments as submitted by traders, and substantially as orders are received, **to execute trades** between matching buy and sell orders, stored buy and sell orders having priority orderings relative to each other reflecting at least one attribute of the order in addition to or instead of price, the priority ordering used by the electronic trading system **to determine priority among orders** for matching for execution:

Peterffy explicitly discloses electronic trading system for the exchange of financial instruments, the trading system designed to receive and store orders, to execute trades and to determine priority among orders (§0002 and §0021-0023).

Examiner notes that the fact that the system is designed to perform the specific functions does not mean that they are actually performing the functions as recited in the claims. The functions recited in the claim are not positive limitations but only requires the elements to be able to perform the functions. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See MPEP 2114 and *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987).

The remaining limitations of claim 1 are substantially equivalent to the limitations of claim 18, and are therefore rejected on the same grounds.

As to claims 3-4, 10, 20-21 and 26, Peterffy does not disclose the following limitations:

- the change includes an increase in the price of the dynamic price improvement order (i.e. a bid or offer in which the submitter would like to have a price priority);
- in which the change includes a decrease in the price of the dynamic price improvement order (i.e. a bid or offer in which the submitter would like to have a price priority);
- wherein determining includes determining the price improvement level such that it is one level higher than the next best order in an order stack, wherein the price improvement level can be adjusted up to a maximum price improvement level.
- wherein the processor is further operable to adjust the price of the dynamic price improvement order (i.e. a bid or offer in which the submitter would like to have a price priority) to one level more improved than the next best order in an order stack, wherein the price improvement level can be adjusted up to a maximum price improvement level.

However, Konia teaches a method and system for automatically managing an auction for determining relative priority for a service in a system wherein priority is based on the relative value of related bids is disclosed. Konia teaches that the system

can perform checks for whether a vendor's bid/order is lower than all other bids/orders in an auction (e.g. trading system). The vendor is allowed to choose a desired position and the system can determine the maximum that the vendor's bid need to be in order to obtain the priority position (e.g. position in a stack). If the system finds that the vendor has achieved the desired position with respect to the buyer server being processed, the system may increase the bid to a maximum which allows the bidder to keep the desired priority. Otherwise, the system decreases the bid without lowering the bid below the minimum bid entered by the vendor (Abstract and col. 10, lines 53-67).

The concept/method taught by Konia comprises: (1) a method for managing the priority position of bids/orders (e.g. dynamic price improvement order) that have been submitted with minimum and maximum amounts (i.e. price improvements), (2) a method for adjusting the bids/orders dynamically to maintain the position, while staying within the range set by the minimum and maximum amounts (i.e. dynamic price improvement indicators) and (3) maintaining said position until order ends.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned method as taught by Konia within Peterffy for the motivation of having a system that monitors the current rankings in auctions (e.g. trading systems) and automatically adjusts its bids/orders according to rules defined by its user (col. 1, lines 27-29). In addition, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include in the trading network of Peterffy, the above mentioned elements as taught by Konia, since the claimed invention is merely a combination of old elements, and in the combination each

element merely would have performed the same function as it did separately, and one of ordinary skill in that art would have recognized that the results of the combination were predictable. See MPEP 2143 (Rev. 6, Sept. 2007).

As to claims 5-9, Peterffy discloses the following elements:

- in which the priority dynamic price improvement order is a position at a front of a trading stack (i.e. top of the book; ¶0040);
- maintaining priority of the dynamic price improvement order relative to other orders based a timestamp assigned to the dynamic price improvement order (¶0025 and ¶0071);
- maintaining the priority based on said timestamp (¶0008 and ¶0011; via price/time priority);
- wherein in the event two or more said dynamic price improvement orders are received, the orders with older timestamps are matched prior to orders with newer timestamps (¶0042); and
- the electronic trading system reveals orders to users at a fixed price increment, and the price increment at which the price of the dynamic price improvement order is adjusted is a fraction of the revealed price increment (¶0024, ¶0047, ¶0052, ¶0054 and Figs. 4 and 4A).

The limitations of claims 22-25 are equivalent to the limitations of claims 5-9, and are therefore rejected on the same grounds.

As to claims 12 and 28, Peterffy discloses the following limitations:

- determining the price improvement level of a best order in an order stack (§0053); and
- assigning a price improvement level to said price improvement order that improves the price of said dynamic price improvement order by one price improvement level when the price improvement level of said best order is not a maximum price improvement level (§0053).

As to claims 13 and 29, Peterffy discloses the following element:

- assigning said maximum price improvement level to said dynamic price improvement order when the price improvement level of said best order is at said maximum price improvement level (§0024, §0047 and §0073-0087).

As to claims 15 and 33, Peterffy discloses the following element:

- providing to traders of the electronic trading system the option to select dynamic price improvement as one of several price improvement order types available for submission to said electronic trading system (i.e. several types of order types can be submitted to the trading host, including orders submitted for price improvement; §0026-0035 and §0046).

As to claims 16-17 and 31-32, Peterffy does not disclose the following element:

- decreasing the price improvement level of the at least one order on the same side of the market as the dynamic price improvement (i.e. a bid or offer in which the submitter would like to have a price priority) order such

that the price improvement level of the at least one same-market-side order does not exceed the price improvement level assigned to the dynamic price improvement order; and

- wherein the price improvement level of the at least one second order is decreased to a price improvement level one level below a maximum price improvement level when the at least one price improved order is assigned a maximum price improvement level as its price improvement level.

However, Konia teaches a method and system for automatically managing an auction for determining relative priority for a service in a system wherein priority is based on the relative value of related bids is disclosed. Konia teaches that the system can perform checks for whether a vendor's bid/order is lower than all other bids/orders in an auction (e.g. trading system). The vendor is allowed to choose a desired position and the system can determine the maximum that the vendor's bid need to be in order to obtain the priority position (e.g. position in a stack). If the system finds that the vendor has achieved the desired position with respect to the buyer server being processed, the system may increase the bid to a maximum which allows the bidder to keep the desired priority. Otherwise, the system decreases the bid without lowering the bid below the minimum bid entered by the vendor (Abstract and col. 10, lines 53-67).

The concept/method taught by Konia comprises: (1) a method for managing the priority position of bids/orders (e.g. dynamic price improvement order) that have been submitted with minimum and maximum amounts (i.e. price improvements), (2) a method for adjusting the bids/orders dynamically to maintain the position, while staying within

the range set by the minimum and maximum amounts (i.e. dynamic price improvement indicators) and (3) maintaining said position until order ends.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned method as taught by Konia within Peterffy for the motivation of having a system that monitors the current rankings in auctions (e.g. trading systems) and automatically adjusts its bids/orders according to rules defined by its user (col. 1, lines 27-29). In addition, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include in the trading network of Peterffy, the above mentioned elements as taught by Konia, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in that art would have recognized that the results of the combination were predictable. See MPEP 2143 (Rev. 6, Sept. 2007).

11. Claims 14 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterffy and Konia as applied to claims 1 and 18 above, and further in view of Serkin et al., Pat. No. 7,209,896 (hereinafter Serkin).

As to claims 14 and 30, neither Peterffy nor Konia discloses or teaches the following limitation:

- wherein said dynamic price improvement order is the default order type for designated traders that use a trading interface to submit orders to the electronic trading system (i.e. the system provides the ability to set a default order type).

However, Serkin teaches a system for handling quotes in an electronic market, said system being capable of processing price improvement orders (Abstract and col. 10, lines 46-51). Serkin also teaches that the system uses a "point-and-click" window-type technology that provides a "default" order feature. Both Peterffy and Serkin disclose and teach system for handling quotes which may contain various types of orders. Therefore, it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include in the trading network of Peterffy, the ability to set a default order type as taught by Serkin, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in that art would have recognized that the results of the combination were predictable. See MPEP 2143 (Rev. 6, Sept. 2007).

12. Claims 39 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peterffy and Konia as applied to claims 1 and 18 above, and further in view of Fraser et al., Pat. No. 5,905,974 (hereinafter Fraser).

As to claims 39 and 40, neither Peterffy nor Konia discloses or teaches the following limitations; however, these limitations are taught by Fraser:

- a contra order matched to the dynamic price improvement order for execution is a lift or take of a standing offer (col.7, lines13-22, col.9, lines40-51, col.11, lines 10-25 and col.12, lines 31-49); and

- a contra order matched to the dynamic price improvement order for execution is a hit of a standing bid (col.7, lines13-22, col.9, lines40-51, col.11, lines 10-25 and col.12, lines 31-49).

It would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to include the aforementioned limitation as taught by Fraser within Peterffy for the motivation to provide customized trading tools for trading customers (col.4, lines 1-53).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY JOHNSON whose telephone number is (571)272-2025. The examiner can normally be reached on Monday - Friday, 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ALEXANDER KALINOWSKI can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Kalinowski/
Supervisory Patent Examiner, Art Unit 3691

GREGORY JOHNSON
Examiner, Art Unit 3691